STATE CONSUMER DISPUTES REDRESSAL COMMISSION

WEST BENGAL

CONSUMER COMPLAINT NO. SC/19/CC/992/2019

Sri Samrat Das & Another .....Complainant(s)
PRESENT ADDRESS - S/o Sri Ashok Kr. Das, FE-146, Sector-III, Salt
Smt. Swagata Das
PRESENT ADDRESS - W/o Sri Samrat Das, FE-146, Sector-III, Salt L

Versus

Smt. Pravati Gangulee & Others .....Opposite Party(s)
PRESENT ADDRESS - W/o Swastik Kr. gangulee, P-159, Sector-A, I
Sandeep Kr. Gangulee
PRESENT ADDRESS - S/o Lt. Swastika Kr. gangulee, P-156, Sector-
Sukanya Chakraborty (Ganguly)
PRESENT ADDRESS - D/o Lt. Swastika Kr. gangulee, P-156, Sector·
M/s. MV Housing Pvt. Ltd.
PRESENT ADDRESS - 27A, Waterloo Street, 2nd Floor, Room no.20
Vinod Kr. Gupta
PRESENT ADDRESS - Constituted attorney, Swastik Kr. Gangulee,
Mohan Kr. Gupta, Director, M/s. MV Housing Pvt. Ltd.
PRESENT ADDRESS - 27A, Waterloo Street, 2nd Floor, P.S. Hare Str

BEFORE:

HON'BLE MRS. SOMA BHATTACHARJEE , PRESIDING MEMBER

HON'BLE MR. ANANDA KUMAR TIWARI , JUDICIAL MEMBER

FOR THE COMPLAINANT: Mr. Obaidul Islam, Ms. Sonia Hazra (Advocate)

FOR THE OPPOSITE PARTY: NEMO

DATED: 13/08/2026

ORDER

FINAL ORDER/JUDGMENT

Date of Filing	Date of Admission	Date of Judgment
12/12/2019	31/12/2019	13/08/2026

HON'BLE ANANDA KUMAR TIWARI

(JUDICIAL MEMBER)

The Complainants filed this case against the OPs under Section 12 of the Consumer Protection Act, 1986 (hereinafter referred to as Act of 1986) praying for reliefs i.e. direction upon the OPs to execute the Deed of Conveyance and registration of the same in respect of the Flat in question at the cost of OPs as well as litigation cost, compensation and damages.

It is the case of the Complainants that the OPs Nos.1, 2 & 3 are the joint owners of land measuring about 4 Cottah something more or less situated at Premises No.P-156, Sector-A, Metropolitan Cooperative Housing Society, Canal South Road, P.S. – PragatiMaidan, Kolkata–700105 and the OPs No.4 to 6 are the Developers in respect of the said plot of land, OP No.5 is the constituted attorney of OP No.1 and oneSwastik Kumar Gangulee (since deceased) being the husband of OP No.1 and father of the OPs No.2 & 3. It is stated that during his lifetime said Swastik Kumar Gangulee and OP No.1 had engaged the OP No.4 to develop the aforesaid plot of land and to construct a multi-storied building and the complainants after coming to know of the fact came in contact with the OPs who handed over to the Complainants all relevant papers and documents including the sanctioned building plan being No.2006070150 and No.2006070151 both dated 20/11/2006 and as per proposal given by the OP No.1 and Swastik Kumar Gangulee (since deceased), the complainants decided to book a Flat and accordingly, booked a flat measuring about 1750 sq. ft. super built up area consisting of three bedrooms, one kitchen-cum-dining room, two toilets and one small Verandah in the first floor of the premises in G+4 storied building together with undivided proportionate share of land attributable to said Flat and car parking space insaid premises being No P-156, Sector-A, Metropolitan Cooperative Housing Society, Canal South Road, P.S. – PragatiMaidan, Kolkata–700105at a total consideration price of Rs.27,90,500/-.

It is stated that accordingly an Agreement for Sale was executed on 25/04/2008 in between the OP No.1,Swastik Kumar Gangulee (since deceased, father of OP No 2 and 3) and the Developer/OPs being Nos.4, 5, 6 and Complainants. It is further stated that the Complainants paid in instalments the total consideration amount of Rs.27,90,500/- and the OPs also issued receipt of the same.

According to the Complainants after construction work was completed the OP No 4 handed over the possession of the said Flat and car parking space to the complainants and also issued Certificate of Delivery of Possession in respect of Flat as well as covered car parking on 29/10/2009 and since then the Petitioners are possessing, enjoying, occupying and residing therein and also obtained electrical connection in said Flat. It is stated that the Petitioners have also mutated their names in the record of KMC in respect of the said Flat and are paying taxes as Allottee being Assesse No 140570205195.

It is the further case of the complainants that in view of the terms of Agreement for Sale, the complainants in due course prepared draft Sale Deed in respect of the said Flat and approached the owners/vendors being OP Members on several occasions and lastly in the month of February, 2017 to approve the draft and to execute the Sale Deed. But OP Members evaded and lastly refused to execute

the Sale Deed in favour of the Complainants. According to the Complainants they thereafter through their Advocate sent legal notice dated 05/10/2018 by registered A/D upon the OPs calling upon them to execute and register the Deed of Conveyance but OP Members did not take any steps to execute Sale Deed. It is stated that the Complainants paid all the consideration money to the OPs but the OPs failed to execute the Registration Deed. Contending the above and other facts, the Complainants prayed for reliefs as described in the prayer portion of the petition of complaint.

After filing of the case notice was issued to the OPs. Subsequently, the OPs Nos.1, 2 & 3 appeared. It further appearthat on 21/10/2022 Ld. Advocate for OPs Nos.4, 5 & 6 also appeared by filing power and submitted that OPs did not receive any petition of complaint and as such, the Complainant was directed to serve copy to the OPs No.4, 5 & 6. The OPs Nos 1, 2 & 3 filed written version but OPs Nos.4, 5 & 6 failed to file written version and did not take any steps. It appears that the Complainants filed evidence but the OPs failed to file any evidence.

In the written version filed on behalf of the OP Nos.1, 2 & 3 it is stated that the case as filed by the Complainants is not maintainable and is bad in law. It is stated that false and frivolous allegation is raised by the Complainants against OP Nos.1, 2 & 3 and further that the Complainants have suppressed material facts. It is further stated that the OP Nos.1, 2 & 3 filed a title suit being No. TS 432 of 2014 before Ld. First Civil Judge, Junior Division of Alipore in respect of schedule property and subsequently, Title suits and Misc. Appeal filed by the OPs against Complainants and OP Nos.4, 5 & 6 are pending. The OP Nos.1, 2 & 3 stated that the Complainants suppressed the fact about pendency of Civil Case and further that the OPs never proposed the Complainants for booking the suit property and in case any Agreement for Sale dated 25/04/2008 is executed by and between the Complainants and the Ops, that has been made without the knowledge of the OP Nos.1, 2 & 3. It is further stated that OP No.1 and her deceased husband initiated criminal proceedings against the OPs No.4, 5 & 6 and further that the Power of Attorney executed by the OP No.1 and her deceased husband was revoked and it was misused by OPs No.4, 5 & 6. It is further stated that the building construction was completed prior to executing final Agreement for Development. OP No.1 and her husband Late Swastik Kumar Gangulee executed Memorandum of Understanding dated 17/06/2005 and 12/06/2006 and on the basis of same they had executedGeneral Power of Attorney in favour of the OP Nos.4, 5 & 6 in good faith for obtaining sanction plan and other works and on 28/06/2007 final Agreement for Development was executed. It is stated that even after completion of the construction of the building, the OPs No.5 & 6 deliberately and purposely with ill motive failed and neglected to hand over the possession of the owner's allocation to the OP No.1 and her deceased husband as well as OPs No.2 & 3. It is stated that OP No.1 and her husband made several requests to the OPs Nos.5 & 6 but they did not pay heed and with an intention to grab entire property did not hand over the owner's allocation to the OPs No.1, 2 & 3 but started handing over the possession of the owner's allocation to the third party outsiders due to which the OP No.1and her husband (since deceased) filed criminal cases against the OP Nos.4, 5 & 6 vide Tiljala P.S. Case No.197 of 2010 before Ld. A.C.J.M, Alipore under Section 420/406/423/468/469/472/120B/506 of Indian Penal Code.

It is further stated that OPs No.4, 5 & 6 could not hand over the possession of the said property in favour of the Complainants behind the back and knowledge of the OP No.1 and her deceased husband as OPs No.1, 2 & 3 restrained the Complainant to take possession of the Flat mentioned in the schedule by informing them that the said flat is disputed property and civil and criminal cases are pending against all the promoters.

It is further stated that the Complainant is residing with his family members in Australia and cannot hold the scheduled property as an owner and further that OP Nos.1, 2 & 3 denied that they have failed and neglected to register the Deed of Conveyance in respect of the said flat alongwith car parking space in favour of the Complainant despite several demands and requests made by the Complainants. It is stated that in case the civil dispute pending between the OP Nos.1, 2 & 3 and OPs No.4, 5 & 6 is solved then the OPs No.1, 2 & 3 will comply with the Final Order/Judgement passed by Higher Forum and have no problem to execute the Deed of Conveyance in favour of the Complainants as per the Final Order/Judgement. It is stated that the OP Nos.4, 5 & 6 already executed registered Deed of Conveyance in favour of other intending purchaser namely, Santanu Sarkar, Manoj Paul, Rinku Rob vide Deed of Conveyance being Nos. 11545 of 2009, 9980 of 2010 and 3081 of 2011 respectively during the tenure of the Power of Attorney and as such, the OPs have no idea why the OPs No.4, 5 & 6 failed to execute registered Deed of Conveyance in favour of the Complainants. OP Nos.1, 2 & 3 mentioned several civil cases in their written version stating that the same are pending. It is stated that there is no cause of action and further that the monetary transaction is taken place between the complainants and the OP Nos.4, 5 & 6, who issued the money receipts and there is no direct nexus with the OPs No.1, 2 & 3 and further that the Complainants made deal with the promoters and as such, the owners have no knowledge about the facts until the Complainants came to the owners demanding that they sign the Deed. Contending the above and other facts as stated in the written version the OP Nos.1, 2 & 3 prayed to dismiss the complaint.

As stated above, the Complainants filed evidence through one Mr Arijit Das being constituted attorney of the complainants stating the facts as stated by complainants in the petition of complaint. We have perused the copies of documents filed by the Complainants. It appears that Agreement for Sale dated 25/04/2008 was entered and executed in between the Swastik Kumar Gangulee (since deceased) and Smt. Pravati Gangulee being Owners/Vendors of the first part, the Complainants being Sri Samrat Das and Smt. Swagata Das being Purchasers of the second part and M/s. M. V. Housing Private Limited being OP No.4, party of third part being Builder/Proforma Party. The agreement for sale reflects that the Purchasers/Complainants entered into an Agreement to purchase the Flat morefully described in the Schedule 'B' of the said Agreement for Sale for consideration of Rs.27,90,500/-. It appears that on behalf of the Vendors/Owners, Vinod Kumar Gupta being OP No.5 signed as constituted attorney and on behalf of the OP No.4 Mohan Kumar Gupta signed as Director. Also perused the copy of theelectric bill in the name of Samrat Das being the Complainant herein in respect of the Flat Nos.1 & 2, 156/A, Metropolitan Cooperative Housing Society Limited.

We have also gone through the Certificate of Delivery of Possession of Flat and one covered car parking area dated 29/10/2009 and it appears the OP No.4 issued the delivery of possession certificate

to the Complainants in respect of the said Flat alongwith covered car parking described in the schedule of said possession letter. The Complainant also annexed copies of money receipt as well as copy of special power of attorney. Also perused the copy of the Tax receipt of Kolkata Municipal Corporation in respect of the Assesse No 140570205195 i.e. Samrat Das and Anr.

We have also perused the copies of Advocate's letter dated 05/10/2018 addressed to Swastik Kumar Gangulee (since deceased) and to the OP Nos 1 and 4, who were called upon to cause registration of the said Flat.

Going through the facts before us we find that after the construction of the Flat in question, the Complainants were handed over the possession of the same but the Ops failed to execute and register deed of conveyance in favour of the complainants in respect of the Flat and covered car parking. The Ops Nos 4, 5 and 6 failed to contest the case. Though OP Nos.1, 2 & 3 claimed that there are several suits pending in between the OPs No.1, 2 & 3 and OP No.4, 5 & 6, but it appears that it is the dispute in between the land owners and promoters/developers in respect of their allocation. The OP Nos 1, 2 and 3 failed to file any evidence thereby raising any dispute in between them and the complainants so far the same relates with the claim of the complainants with respect of the Flat in question and car parking.

In view of the facts and circumstances as well as discussion as above, we are of the opinion that the Complainant is entitled to get the relief as prayed. .

Hence it is

ORDERED

That the Complaint Case being CC/992/2019 is allowed on merit against the Opposite parties Nos 1, 2 & 3 and ex-parte against the Opposite parties Nos 4, 5 & 6 without any order as to costs. The Opposite parties are directed to execute and register deed of conveyance in favour of the complainants in respect of the flat in question along with the covered car parking as per the certificate of delivery of possession within Forty Five days of passing of this order. The Complainants are to bear the expenses of the Stamp duty and registration fees payable as well as other legal expenses.

In addition, taking into consideration the facts and circumstances of the case, the Opposite Parties Nos 4, 5 and 6 are directed to pay Rs 1,00,000/- as compensation and Rs 25,000/- jointly or severally as litigation cost to the complainants within 45 days of passing of this order.

Applications pending, if any, stands disposed of in terms of the judgment.

In case the Opposite parties fail to comply with the order as above, the complainants will be at liberty to put the order for execution as per law.

Let a copy of the order be supplied to the parties free of cost and the judgment be uploaded in the website.

Due to heavy pendency of cases the complaint could not be disposed of within statutory period.

Dictated and corrected by me

ANANDA KUMAR TIWARI

(JUDICIAL MEMBER)

Typed by me

Debarati Dutta

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SOMA BHATTACHARJEE

PRESIDING MEMBER

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ANANDA KUMAR TIWARI

JUDICIAL MEMBER